IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9827 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY.EXECUTIVE ENGINEER - Petitioner(s)

Versus

BALWANTKUMAR NATWARLAL MODI - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner No(s).: 1.

MR PF MAKWANA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 09/08/2005

ORAL JUDGMENT

1.0 The matter was listed before this Court time and again. On 13.07.2005, the matter was adjourned to

27.07.2005 at the request of Mr. Makwana. However, on 27.07.2005 Mr. Makwana was not present, and therefore, the matter was adjourned to 05.08.2005. On 05.08.2005 the matter was adjourned to 09.08.2005 with a clear direction that if on the next date Mr. Makwana does not remain present, the matter will be proceeded on merits. In spite of the above orders, today Mr. Makwana is not present even in the second round. Hence, the matter is proceeded in the absence of Mr. PF Makwana learned advocate for the respondent.

2.0 The petitioner has challenged the award dated 07.10.1997 passed by the Labour Court, Bharuch, in Reference (LCB) No. 442 of 1990, whereby the petitioner was directed to reinstate the respondent in service with full back wages on his original post.

3.0 The brief facts of the case are that the respondent herein was given assignment as a Work-charge Karkoon w.e.f 29.01.1985 by the petitioner. After the completion of the work, he was terminated from the service. Being aggrieved by the said order, the respondent raised a dispute, which, ultimately, culminated into a reference. The Labour Court, after hearing the parties and

considering the evidence produced on record, passed the impugned award. Hence, this petition.

4.0 Ms. Sejal Mandavia learned advocate for the petitioner has contended that though specific contention was raised before the Labour Court that the respondent was appointed purely as a Work-charge Karkoon, the Labour Court has erred in arriving at the conclusion that the petitioner had committed breach of Section 25-F of the Industrial Disputes Act, 1947.

4.1 Ms. Mandavia has submitted that the respondent was given assignment as Work-charge Karkoon on 29 days basis with actual break in service. Separate orders showing the appointment of the respondent as such is produced at Annexure-'B' to the petition. She has submitted that since the appointment of the respondent was purely on contractual basis, the provisions of Section 25-F will not apply to the case on hand.

5.0 I have heard learned counsel for the petitioner and perused the documents placed on record. On 29.06.1999 this Court had stayed the execution of the impugned award in view of the statement made by the learned advocate for

the petitioner that neither any work nor grant was available with the petitioner Panchayat. Therefore, the compliance of the Labour Court award had become practically impossible.

5.1 The contention raised by Ms. Mandavia is required to be accepted inasmuch as the Labour Court has erred in not considering the contention raised by the petitioner regarding Section 2(oo)(bb) of the Industrial Disputes Act, 1947. In my opinion, the Labour Court has committed serious illegality in arriving at the conclusion that breach of Section 25-F of the Industrial Disputes Act, 1947 had taken place. Even otherwise, in view of the statement made by the learned advocate for the petitioner, the impugned award of the Labour Court cannot be complied with.

6.0 Having gone through the impugned award, it appears that the Labour Court has given the benefit of doubt to the respondent while awarding him full back wages. No cogent reasons have been given by the Labour Court while awarding the same. Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J.,

pg.176, a workman cannot have automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

6.1 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. In that view of the matter, the impugned award of the Labour Court is required to be quashed and set aside.

7.0 For the foregoing reasons, this petition is allowed. The impugned award dated 07.10.1997 passed by the Labour Court, Bharuch, in Reference (LCB) No. 442 of 1990, is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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